

**This Opinion Is Not a
Precedent Of The TTAB**

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Pup Scouts, LLC

Serial No. 86048207

Matthew H. Swyers of The Trademark Company, for Pup Scouts, LLC.

Jean H. Im, Trademark Examining Attorney, Law Office 101 (Ronald R. Sussman, Managing Attorney).

Before Seeherman, Ritchie and Adlin, Administrative Trademark Judges.

Opinion by Ritchie, Administrative Trademark Judge:

PUP SCOUTS, LLC (“Applicant”) filed an application to register the mark PUP SCOUTS,¹ in standard character form, for “indicating membership in an organization for pets and their human counterparts,” in U.S. Class 200. The Trademark Examining Attorney refused registration of Applicant’s mark under Section 2(d) of the Trademark Act of 1946, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark so resembles the following registered marks, all owned by the same registrant, that its use as Applicant’s membership mark is likely to cause confusion or mistake or to deceive:

¹ Serial No. 86048207, filed August 26, 2013, pursuant to Section 1(a) of the Trademark Act, 15 U.S.C. § 1051(a), alleging dates of first use and first use in commerce on May 1, 2010.

DOG SCOUTS OF AMERICA, in standard character form,

for “on-line retail store services featuring clothing, gift items, water bottles, dog packs and harnesses, books and products, equipment and accessories for the care and training of dogs; and, association services, namely, promoting the interests of pets and pets parents through the promotion of responsible pet parenting and ownership and through educating people about the care and training of their dogs and the importance of the human/canine bond,”² in International Class 35; and

for “providing live and on-line educational services, namely, classes, seminars and camps in the fields of responsible pet parenting and ownership; dog training services, conducting seminars on dog training and dog care, conducting dog training; dog training camps; and providing on-line educational information in the field of dog care and training,” in International Class 41;³ and



for “providing live and on-line educational services, namely, classes, seminars and camps in the fields of responsible pet parenting and ownership; dog training services, conducting seminars on dog training and dog care, conducting dog training; dog training camps; and providing on-line educational

² Registration No. 3501260, issued September 16, 2008, disclaiming an exclusive right to use the terms “DOG” and “AMERICA” apart from the mark as shown. Sections 8 and 15 affidavits, respectively accepted and acknowledged.

³ Registration No. 3501263, issued September 16, 2008, disclaiming an exclusive right to use the terms “DOG” and “AMERICA” apart from the mark as shown. Sections 8 and 15 affidavits, respectively accepted and acknowledged.

information in the field of dog care and training,”⁴ in International Class 41; and

for “on-line retail store services featuring clothing, gift items, water bottles, dog packs and harnesses, books and products, equipment and accessories for the care and training of dogs; and, association services, namely, promoting the interests of pets and pets parents through the promotion of responsible pet parenting and ownership and through educating people about the care and training of their dogs and the importance of the human/canine bond,”⁵ in International Class 35.

Upon final refusal of registration,⁶ Applicant filed a timely appeal. Both Applicant and the Examining Attorney filed briefs. For the reasons discussed herein, we affirm the refusal to register.

We base our determination under Section 2(d) on an analysis of all of the probative evidence of record bearing on a likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973); *see also, In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and services. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of

⁴ Registration No. 3501265, issued September 16, 2008, disclaiming an exclusive right to use the terms “DOG” and “AMERICA” apart from the mark as shown. Sections 8 and 15 affidavits, respectively, accepted and acknowledged.

⁵ Registration No. 3501266, issued September 16, 2008, disclaiming an exclusive right to use the terms “DOG” and “AMERICA” apart from the mark as shown. Sections 8 and 15 affidavits, respectively accepted and acknowledged.

⁶ In the initial Office action the Examining Attorney also required a disclaimer of the term “PUP.” Applicant did not address this requirement in its response, although the Examining Attorney stated in the final Office action that the disclaimer requirement “has been satisfied.” We treat the Examining Attorney’s statement to be a withdrawal of the disclaimer requirement.

differences in the essential characteristics of the goods and differences in the marks”). We consider the factors discussed by Applicant and the Examining Attorney. The others we deem neutral.

For purposes of our likelihood of confusion analysis, we focus on Registration No. 3501260 (DOG SCOUTS OF AMERICA, in standard character form). We find this registration to be the closest of the cited registrations to Applicant’s application in terms of both the marks and the services. Accordingly, if we find a likelihood of confusion as to this cited registration, this will be a sufficient basis on which to affirm the refusal of registration. On the other hand, if we don’t reach that conclusion, we would not find likelihood of confusion as to the other cited registrations. *See In re Hitachi High-Technologies Corp.*, 109 USPQ2d 1769 (TTAB 2014); *In re Max Capital Group Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

Membership/Services and Channels of Trade

The application identifies “indicating membership in an organization for pets and their human counterparts” while Registration No. 3501260 identifies, *inter alia*, “association services, namely, promoting the interests of pets and pets parents through the promotion of responsible pet parenting and ownership and through educating people about the care and training of their dogs and the importance of the human/canine bond.”

At the outset, we note that Applicant identifies a collective membership mark, while the cited registration identifies a service mark. *See Leading Jewelers Guild Inc. v. LJOW Holdings LLC*, 82 USPQ2d 1901, 1903 (TTAB 2007). Although the ultimate Section 2(d) inquiry is the same, the underlying analysis with respect to collective

membership marks is somewhat different from that applied to trademarks or service marks. The trademark or service mark analysis typically involves a determination of likelihood of confusion among purchasers or users as to the source of goods or services. However, a collective membership mark does not involve purchasers of goods or services. The sole purpose of a collective membership mark is to indicate membership in an organization. While goods and services may be provided by members of an organization, a collective membership mark, as used or displayed by the members of an organization, serves only to identify the fact that such members belong to the collective organization and to inform relevant persons of the members' association with the organization. *Id.*, citing *Carefirst of Maryland, Inc. v. FirstHealth of the Carolinas, Inc.*, 77 USPQ2d 1492, 1512 (TTAB 2005).

The Board indicated in *Carefirst of Maryland* that the term "relevant persons," for purposes of a collective membership mark, would not consist of "purchasers," but rather those persons or groups of persons for whose benefit the membership mark is displayed. 77 USPQ2d at 1513. (citation omitted). Thus, in the case of Applicant's collective membership mark and Registrant's service mark, the question is whether relevant persons are likely to believe that the collective organization, i.e., Applicant, is endorsed by or in some way associated with the provider of the association services, i.e., Registrant. *See Leading Jewelers Guild Inc.* 82 USPQ2d at 1904. Here, it is clear on the face of the identifications that Applicant's organization and Registrant's services both involve pets and their owners. That Applicant offers its membership for the benefit of pets and their owners, and Registrant offers association services directly

to the pets and their “human counterparts,” does not detract from the fact that there is a clear and obvious nexus on the face of the identifications.

Thus, contrary to Applicant’s arguments, we find Applicant’s and Registrant’s identifications to be directly and clearly related, which favors finding a likelihood of confusion.

Regarding the channels of trade, Applicant argues that Registrant’s website shows it to be limited to certain states and certain channels of trade. There is nothing in Registrant’s identification of services, however, that limits them, beyond being association services, to any particular geographic area or trade channel. Applicant’s channels of trade are also not restricted. People may encounter Applicant’s membership mark online or through other channels of trade. We find, therefore, that Applicant’s members may encounter Registrant’s services. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 110 USPQ2d 1157 (Fed. Cir. 2014) (involving service marks without limitations as to channels of trade); *see also Squirtco v. Tomy Corporation*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983). This, too, favors finding a likelihood of confusion.

The Marks

We consider and compare the appearance, sound, connotation and commercial impression of the marks in their entireties. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). In comparing the marks, we are mindful that the test is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impression so

that confusion as to the source of the goods and/or services offered under the respective marks is likely to result. *San Fernando Electric Mfg. Co. v. JFD Electronics Components Corp.*, 565 F.2d 683, 196 USPQ 1, 3 (CCPA 1977); *Spoons Restaurants Inc. v. Morrison Inc.*, 23 USPQ2d 1735, 1741 (TTAB 1991), *aff'd unpublished*, No. 92-1086 (Fed. Cir. June 5, 1992). The proper focus is on the recollection of the average customer, who retains a general rather than specific impression of the marks. *Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980); *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106, 108 (TTAB 1975).

Applicant's mark is PUP SCOUTS. The mark in the cited registration is DOG SCOUTS OF AMERICA. While the first terms look and sound different, the Examining Attorney submitted a definition of "PUP" as meaning "a young dog; a puppy; *Origin* short for puppy." *YourDictionary.com*. (July 11, 2014 Office Action at 14-15). The final term of the mark in the cited registration, "OF AMERICA" is descriptive and disclaimed, and does not change its commercial impression. *See In re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 750 (Fed. Cir. 1985) (descriptive or disclaimed matter is generally considered a less dominant portion of a mark). Accordingly, both marks give the commercial impression of a dog or young dog that is a scout, and when used in connection with the respective services or membership mark, suggest an organization similar in style to the Boy Scouts or Girl Scouts with dogs as its focus, or an association that has dogs as its focus.

We acknowledge the weakness of the marks. The mark in cited Registration No. 3501260 disclaims the term "DOG," which is descriptive of services for "pets and pet parents" and the word "PUP" in Applicant's mark relates to "pets and their human

counterparts.” However, as our precedent dictates, even the owner of a weak mark is entitled to protection against the registration of confusingly similar marks. *See Giant Food Inc. v. Roos and Mastacco, Inc.*, 218 USPQ 521 (TTAB 1982).

Because the marks are extremely similar in meaning and overall commercial impression, notwithstanding their differences in sight and sound we find this factor, too, to favor finding a likelihood of confusion.

Consumer Sophistication

Applicant urges us to consider the consumer sophistication and degree of purchaser care likely to be exercised. Applicant submitted an affidavit of its found, Kay Lorinc, dated April 17, 2014, which states, “In my experience with our business our clients exercise a very high level of sophistication in choosing the services offered under our PUP SCOUTS mark. After all, they are choosing services which are designed to attract a very specific consumer, namely, those interested in honoring their pets by means of participating in collective group with other pet owners.” [sic] (Lorinc affid. at para. 9) She further states: “It can only be assumed that the DOG SCOUTS OF AMERICA mark is used to attract those seeking education, certification and training for dogs and dog owners.” *Id.* These statements are legal conclusions not supported by the evidence of record. For example, there is no evidence as to the price range for either Registrant’s services or membership in Applicant’s organization, and in any event neither Applicant’s nor Registrant’s identification is limited by price or type of consumer. *Stone Lion Capital Partners, LP* 110 USPQ2d at 1162. Given that the potential consumers for both Applicant’s collective group and the Registrant’s

association services are most pet (dog) owners, which would include the general public, we find this factor to weigh in favor of finding a likelihood of confusion.

Actual Confusion

Applicant further asks us to consider the absence of actual confusion. However the absence of actual confusion carries little weight, especially in an *ex parte* context. In particular, there is no evidence to show that there has been an opportunity for confusion to occur, such that we can conclude that confusion is not likely to occur. *In re Majestic Distilling Co, Inc.*, 65 USPQ2d at 1205. We find this factor to be neutral.

Conclusion

Accordingly, we find that there is a likelihood of confusion between Applicant's mark, PUP SCOUTS, and the mark DOG SCOUTS OF AMERICA for association services as identified in Registration No. 3501260. In view thereof, we do not reach the question of likelihood of confusion with respect to the other cited registrations.

Decision: The refusal to register is affirmed on the basis of likelihood of confusion with Registration No. 3501260.